

**MINUTES FOR THE COURT OF APPEAL  
STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT**

**June 29, 2007**

6-29-07

997171-07

The **HONORABLE FRANK Y JACKSON**, Judge of the Superior Court of California, County of Los Angeles, is hereby assigned to assist the Court of Appeal, Second Appellate District, Division One, as a justice thereof, on the following dates:

**July 1, 2007 to September 30, 2007**

and until completion and disposition of all causes and matters submitted pursuant to this assignment including, if necessary by reason of a vacancy or disqualification of a Court of Appeal justice, all petitions for rehearing arising out of such causes and matters.

This assignment does not extend to any matter in which the panel would be composed of two justices pro tempore.

Dated: June 22, 2007

Ronald M. George  
Chief Justice of California and  
Chairperson of the Judicial Council

June 29, 2007 (Continued)

## DIVISION ONE (continued)

B192413 People (Not for Publication)

V.

Heidy Flores

The judgment is affirmed.

Rothschild, J.

We concur:   Mallano, Acting P.J.  
                      Jackson, J. (Assigned)

B191324 J. Mark Burnett (Not for Publication)

V.

Dianne J. Burnett

The judgment is affirmed.

Mallano, Acting P.J.

We concur: Vogel (Miriam A.), J.  
Rothschild, J.

B188091 Charles Shapiro (Not for Publication)

V.

Alan Rosenbach et al.

The judgment is affirmed. Defendants are entitled to their costs on appeal.

Mallano, Acting P.J.

We concur: Vogel (Miriam A.), J.  
Rothschild, J.

DIVISION ONE (continued)

B189650      Wollam International Corp.      (Not for Publication)

v.

New Era Decorative Fabrics, Inc.

The order of dismissal as to TDC International Express Corporation and Noltan Freight Logistics, Inc., is affirmed. The order of dismissal as to respondent New Era Decorative Fabrics, Inc., is reversed and on remand the trial court is directed to afford Wollam International Corp. a reasonable amount of time to file a motion for leave to file an amended complaint as to New Era. The parties are to bear their own costs on appeal.

Mallano, Acting P.J.

We concur:    Rothschild, J.  
                 Jackson, J. (Assigned)

B183052      Chloe I. Moch      (Not for Publication)

v.

Deborah Anderson et al.

The judgment in favor of Dr. Kamat is affirmed. The judgment in favor of Dr. Anderson is reversed and the matter is remanded for further proceedings. The parties are to bear their own costs on appeal.

Jackson, J. (Assigned)

We concur:    Mallano, Acting P.J.  
                 Vogel (Miriam A.), J.

June 29, 2007 (Continued)

## DIVISION ONE (continued)

B191171      People                      (Not for Publication)  
v.  
Potts

The judgment is affirmed.

Rothschild, J.

We concur: Vogel (Miriam A.), Acting P.J.  
Jackson, J. (Assigned)

B183432 People (Not for Publication)  
v.  
Darrell Sean Thomas et al.

As to Thomas and Young, the convictions on counts 10 and 11 are reversed. The enhancements imposed under Penal Code section 186.22, subdivision (b)(1), are reversed. In all other respects, the judgments of conviction are affirmed. The case is remanded for resentencing in accordance with the views expressed herein. As to Gresham, the judgment is reversed.

Jackson, J. (Assigned)

I concur:       Rothschild, J.  
I concur and dissent: Vogel (Miriam A.), Acting P.J. (opinion)

## DIVISION ONE (continued)

[illegible]

The judgment is affirmed.

Rothschild, J.

We concur:   Mallano, Acting P.J.  
                      Vogel (Miriam A.), J.

B192303      People                                  (Not for Publication)  
v.  
Juan Ramon Centeno

We strike the redundant second prison term finding under section 667.5, subdivision (b). The case is remanded to the trial court which shall prepare an amended abstract of judgment so stating and forward a copy to the Department of Corrections. Because striking this finding does not affect the sentence, we affirm the judgment in all other respects.

Rothschild, J.

We concur: Vogel (Miriam A.), Acting P.J.  
Jackson, J. (Assigned)

## DIVISION ONE (continued)

B195141 People (Not for Publication)

V.

## Fuentes

The order awarding Fuentes 192 days of actual presentence custody credit is reversed, and the judgment is modified to award him 193 days of such credit. The case is remanded for the trial court to prepare an amended abstract of judgment so stating and to forward a copy to the Department of Corrections. In all other respects the judgment is affirmed.

Rothschild, J.

We concur:   Mallano, Acting P.J.

Vogel (Miriam A.), J.

B190752 People (Not for Publication)

V.

## Short

The judgment is modified by striking the one-year enhancement imposed pursuant to section 667.5, subdivision (b), for Short's 1995 conviction of assault with a deadly weapon, thereby reducing Short's aggregate sentence to 20 years, and, as modified, affirmed and remanded to the trial court with directions to issue a corrected abstract of judgment and to forward it to the Department of Corrections.

Vogel (Miriam A.), J.

We concur:   Mallano, Acting P.J.

Rothschild, J.

## DIVISION ONE (continued)

B192378 People (Not for Publication)

V.

Smith

The order denying Smith's request for modification of the probation condition prohibiting out-of-county travel is reversed and the cause is remanded to the trial court with directions to fashion a less restrictive limitation based on Smith's particularized circumstances or, in the alternative, to eliminate the travel restriction with regard to Smith's work.

Vogel (Miriam A.), J.

We concur:   Mallano, Acting P.J.  
                      Rothschild, J.

B185806      Bussell      (Not for Publication)

B187765 v.

Swearinger

Estate of Georgine Darcy, deceased.

The judgment is reversed, and the orders appointing Swearinger executor of Darcy's estate and granting him letters testamentary are vacated with directions to reconsider those orders in light of our reversal of the judgment. Each party shall bear its costs on appeal.

Rothschild, J.

We concur:   Mallano, Acting P.J.  
                      Vogel (Miriam A.), J.

DIVISION ONE (continued)

B185671      Armenta (qui tam) et al.                      (Not for Publication)  
                 v.  
                 James Jones Co. et al.

The appeal is dismissed. The parties are to bear their own costs on appeal.

Jackson, J. (Assigned)

I concur:      Mallano, Acting P.J.  
I concur::      Vogel (Miriam A.), J. (opinion)

B187195      People    (Not for Publication)  
                 v.  
                 Hernandez

The judgment is reversed and the cause is remanded for a new trial. The order denying defendant's motion for a new trial, including the denial of the motion for juror information disclosure, is vacated.

Jackson, J. (Assigned)

We concur:      Vogel (Miriam A.), Acting P.J.  
                 Rothschild, J.



June 29, 2007 (Continued)

DIVISION THREE

B190538 People (Not for Publication)  
v.  
Moore

The portion of the judgment staying imposition of punishment for the enhancements under Penal Code section 667.5, subdivision (b), is reversed. The matter is remanded for further proceedings consistent with the opinions expressed herein. In all other respects, the judgment is affirmed.

Aldrich, J.

We concur: Klein, P.J.  
Croskey, J.

DIVISION SIX

B192816 People  
v.  
Robles

B194071 Robles  
v.  
Los Angeles Co. Superior Court (The People, r.p.i.)

Filed order consolidating above captioned appeals.

## DIVISION EIGHT

Court convened at 9:00 a.m.

Present: Cooper, P.J., Rubin, J., Boland, J., Flier, J. and Connie Hon, Deputy Clerk.

Each of the following:

B189582 Guest v. Rose  
B189877 People v. Free

DIVISION EIGHT (continued)

Each of the following (continued):

B192331 People v. Moye

B194184 Salamone v. City of Walnut et al.

Argument waived, cause submitted.

B191655      Hernandez et al.,  
                         v.  
                         Ruelas et al.

Merits:

Argued by Tamila Jensen for appellants and by Linda T. Barney for respondent. Cause submitted.

B190203      People  
                         v.  
                         Medina

Merits:

Argued by Roberta Simon for appellant and by Robert Schneider, Deputy Attorney General for respondent. Submission deferred. Letter briefs ordered to be filed by July 6, 2007, at which time the matter will be deemed submitted.

B190867      People  
                         v.  
                         Ramos

Merits:

Argued by Vanessa Place for appellant and by Joseph Lee, Deputy Attorney General for respondent. Cause submitted.

DIVISION EIGHT (continued)

B187280      Sears, Roebuck & Co.,  
                 v.  
                 National Union Fire Insurance Company

Merits:

Argued by Peter Abrahams for appellant and by Allan B. Moore for respondent. Cause submitted.

B190191      Washington,  
                 v.  
                 Allstate Indemnity Company

Merits:

Argued by Robert Shtofman for appellant and by Michael Pollak for respondent. Cause submitted.

Cooper, P.J. left the bench.

B187661      Cytodyn of New Mexico, Inc.,  
                 v.  
                 Amerimmune Pharmaceuticals, Inc., et al.

Merits:

Argued by Marshall Brubacher for appellant and by Bruce Lorman for respondents. Cause submitted.

B193031      In re Marriage of:  
                 Jeffrey W. Rothrock  
                 and  
                 Martha Rothrock

Matter ordered off calendar pending further order.

DIVISION EIGHT (continued)

B193953     Kung,  
                 v.  
                 Yao et al.

Merits:

Argued by Ricky Poon for appellants and by Steve Luan for respondent.  
Cause submitted.

Rubin, J., left the bench.

Cooper, P.J. returned to the bench.

B194542     Los Angeles County, D.C.S.  
                 v.  
                 James M.; Stacey M., James M., and Diane K.

Merits:

Argued by Christopher Blake, Michael Salazar and Mary E. Handy for  
appellants and by Owen Gallagher, Deputy County Counsel for respondent.  
Cause submitted.

Rubin, J. returned to the bench.

Cooper, P.J. left the bench.

DIVISION EIGHT (continued)

B182089      Apollo Capital Fund, LLC, et al.  
v.  
Roth Capital Partners, LLC, et al.

Merits:

Argued by Laurence Rosen and Thomas Dressler for appellants and by Paul A. Richler for respondents. Cause submitted.

Court adjourned.

[illegible]

The judgment is modified to reflect 294 days presentence conduct credits. In all other respects, the judgment is affirmed.

Cooper, P.J.

We concur: Rubin, J.  
Flier, J.

B193014      Cal-Western Reconveyance      (Certified for Publication)  
v.  
Barry Reed

The order is affirmed in part and reversed in part, and the cause is remanded with directions to enter a new order consistent with this opinion. The parties are to bear their own costs.

Boland, J.

I concur: Rubin, Acting P.J.  
I dissent: Flier, J. (opinion)

DIVISION EIGHT (continued)

B182880      Russell Christoff      (Certified for Publication)

v.

Nestle USA, Inc.

The judgment is reversed. The order awarding attorney fees is reversed.  
The case is remanded to the trial court for retrial. Each party to bear his or  
its own costs on appeal.

Cooper, P.J.

I concur:      Rubin, J.

I dissent:      Boland, J. (opinion)

B194926      J.C. Gury Company      (Certified for Publication)

v.

Nippon Carbide Industries Inc.

The judgment is affirmed. Gury is entitled to its costs on appeal.

Boland, J.

I concur:      Cooper, P.J.

I dissent:      Flier, J. (opinion)

B191728      People      (Not for Publication)

v.

Roberto Diaz

The judgment is affirmed.

Rubin, J.

I concur:      Cooper, P.J.

I dissent:      Boland, J. (opinion)

DIVISION EIGHT (continued)

B191510      Darlene Cleairmont Richardson      (Not for Publication)  
                 v.  
                 Peter James Richardson

The order under review is reversed. The trial court is directed to issue a new and properly calculated child support order including interest accrued through the date of the new order. Wife is entitled to costs on appeal.

Rubin, Acting P.J.

I concur:      Boland, J.  
I dissent:      Flier, J. (opinion)